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Interim Project Report 2000-80

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Committee on Natural Resources

Senator Charlie Bronson, Chairman

MANDATORY REVIEW OF THE SCHEDULED REPEAL OF THE PRESERVATION 2000 BOND PROCEEDS DISTRIBUTION FORMULA

SUMMARY

Section 259.101(3), F.S., relating to the distribution of bond proceeds for the Preservation 2000 Program (P-2000) is repealed effective October 1, 2000, and a legislative review must be made prior to repeal.

The P-2000 Program is an ambitious 10-year land buying program financed through the annual sale of up to \$300 million in bonds. The proceeds of the bond sales are deposited into the Preservation 2000 Trust Fund and are distributed to the following agencies pursuant to the percentages specified in s. 259.101(3), F.S.: the Department of Environmental Protection (DEP) Division of State Lands, the five water management districts; the Department of Community Affairs Florida Communities Trust, the DEP Division of Recreation and Parks, the Department of Agriculture and Consumer Services Division of Forestry, the Game and Fresh Water Fish Commission, and the DEP's Greenways and Trails Program.

The ninth issue of the bonds was made on June 8, 1999. The tenth and final issue is expected to be made in May or June of 2000, well ahead of the scheduled repeal of the distribution formula. As a result, it would appear that although the scheduled repeal of s. 259.101(3), F.S., on October 1, 2000, would occur after the sale of the tenth and final bond issue, an argument can be made to repeal the repealer and keep the section intact until such time as the entire section relating to the P-2000 Program can be repealed, probably sometime in the next 2 to 3 years.

In the course of this review, it has been found that little attention has been paid to the accumulation and disposition of interest earnings on P-2000 bond issues. The Legislature should address this issue statutorily during the 2000 legislative session.

In 1999, the Legislature enacted ch. 99-247, L.O.F., the Florida Forever Program, which is the successor program to the P-2000 Program. Since the enactment of

the Florida Forever Program, some glitches have been discovered that need to be addressed in legislation for the 2000 legislative session.

BACKGROUND

The 1990 Legislature enacted ch. 90-217, L.O.F., known as the Preservation 2000 Program, or the P-2000 Program. This ambitious program provides for the annual sale of up to \$300 million in bonds, not to exceed a total of \$3 billion over a 10-year period, and the use of the proceeds to acquire lands for conservation and recreation and the provision of open space within urban areas. Although there is no requirement that bonds be sold annually, the Legislature has provided funds from the documentary stamp tax for the issuance of approximately \$300 million in bonds in each year of the program. Less the costs of issuance and other costs, the proceeds of bond sales are deposited into the Florida Preservation 2000 Trust Fund and are distributed by the Department of Environmental Protection (DEP) annually as follows:

- C Fifty percent (approximately \$150 million) to the DEP for the purchase of lands under the CARL program.
- C Thirty percent (approximately \$90 million) to the state's five water management districts for the purchase of lands needed for water management, conservation of water resources, implementation of surface water improvement and management plans, and to implement the Everglades Construction Project.
- C Ten percent (approximately \$30 million) to the Department of Community Affairs Florida Communities Trust for land acquisition grants and loans to local governments to provide open space in urban areas. Funds are also used to acquire development rights in the Green Swamp.

- C Two and nine-tenths percent (approximately 8.7 million) to the DEP's Division of Recreation and Parks for the purchase of inholdings and additions to state parks.
- C Two and nine-tenths percent (approximately \$8.7 million) to the Department of Agriculture and Consumer Services Division of Forestry for the purchase of inholdings and additions to state forests.
- C Two and nine-tenths percent (approximately \$8.7 million) to the Game and Fresh Water Fish Commission for the purchase of inholdings and additions to lands managed by the commission which are important to the conservation of fish and wildlife.
- C One and three-tenths percent (approximately \$3.9 million) to the DEP's Greenways and Trails Program to acquire greenways and trails or greenways and trail systems pursuant to ch. 260, F.S., including, but not limited to, abandoned railway rights-of-way and the Florida National Scenic Trail.

As of June 30, 1999, the P-2000 program has provided \$2,657,685,515 in proceeds and earnings. Of this, over \$1.9 billion has been expended to acquire more than one million acres. A further \$214.3 million is currently reserved for approved commitments to acquire 135,483 acres.

Subsection (3) of s. 259.101, F.S., provides for the allocations of the annual P-2000 bond proceeds. Originally, portions of these allocation provisions as they relate to the small land buying programs were scheduled for repeal on October 1, 1992, to evaluate the need for continuing such allocations. Chapter 92-288, L.O.F. extended that date until October 1, 1996. In 1996, this date was once again extended to October 1, 2000, to correspond with end of the P-2000 program. At that time, the entire subsection is repealed which includes the allocations to the DEP and the water management districts and must be reviewed by the Legislature prior to that date.

METHODOLOGY

In preparing materials for this report, staff held meetings and conducted telephone interviews with officials at the State Board of Administration, the Department of Environmental Protection, and representatives of business groups and environmental organizations.

FINDINGS

Throughout the history of the P-2000 program, the annual bond issues have occurred late in the fiscal year. Section 201.15(1)(a), F.S., provides that "no individual series of bonds may be issued pursuant to this paragraph unless the first year's debt service for such bonds is specifically appropriated in the General Appropriations Act." This in essence signifies legislative approval of each new bond issue.

Table I shows the dates of issuance for the last five bond issues and the date of deposit of the bond proceeds into the P-2000 Trust Fund.

SERIES	DATE SOLD	DATE DEPOSITED	AMOUNT
1995A	4/12/95	4/12/95	\$268,013,766
1996A	4/24/96	4/24/96	268,940,914
1997A	5/6/97	5/6/97	267,928,663
1998B	5/13/98	5/13/98	281,715,165
1999A	6/8/99	6/8/99	275,816,974

The 1999A issue was the ninth bond issue of the P-2000 program. The Legislature approved the final series in the General Appropriations Act for Fiscal Year 1999-2000. Following this trend of issuance, it is anticipated that the tenth issue and final bond issue would be sometime in May or June of 2000, well ahead of the scheduled repeal of the distribution formula.

The anticipated proceeds from this final issue and the spending authority for those proceeds as provided in the 1999-2000 General Appropriations Act are based on the allocation formula specified in s. 259.101(3), F.S. The appropriations to state agencies from the P-2000 Trust Fund are treated as fixed capital outlay and must comply with provisions in s. 216.181, F.S., which generally allows up to three fiscal years for the expenditures to be completed.

In view of the above, it would appear that although the scheduled repeal of s. 259.101(3), F.S., on October 1, 2000, would occur after the sale of the tenth and final bond issue, an argument can be made to repeal the repealer and keep the section intact until such time as the entire section relating to P-2000 can be repealed.

In the course of obtaining information for this report, it was noted that there are significant cash balances less encumbrances from previous P-2000 bond issues that remain unexpended. The following table contains the

specifics pertaining to these cash balances as of June 30, 1999, as reported by the Department of Environmental Protection.

Agency	% Distribution	Cash Bal.
DEP-State Lands	50.0%	\$250,670,222.09
DEP-Rec. & Parks	2.9%	18,087,535.68
FWCC	2.9%	24,443,784.60
DACS-Forestry	2.9%	(8,542,297.11)
DEP-Rails-Trails	1.3%	5,013,839.19
DEP to WMD	30.0%	174,803,829.00
DCA (FCT)	10.0%	56,925,755.12
TOTAL		\$516,388,829.38

Also, it should be noted that bond funds appropriated to agencies pursuant to the allocations in s. 259.101(3), F.S., that remain unspent, earn interest which in turn is maintained and accounted for in separate accounts for the respective agencies. It appears that these interest earnings do not have spending authority for these substantial funds in the current General Appropriations Act.

Section 259.101(9)(f), F.S., provides that beginning in FY 1999-2000, that portion of the unencumbered balances of each program described in s. 259.101(3)(c), (d), (e), (f), and (g), F.S., which has been on deposit in such programs P-2000 account for more than 3 fiscal years shall be redistributed equally to the Department of Environmental Protection, Division of State Lands P-2000 subaccount for the purchase of CARL lands, and the Water Management District P-2000 subaccount for the purchase of certain water management lands. The programs affected include the Florida Communities Trust, the DEP's Division of Recreation and Parks, the Department of Agriculture and Consumer Services Division of Forestry, the Fish and Wildlife Conservation Commission, and the Florida Greenways and Trails Program. The Department of Environmental Protection has coordinated with the agencies involved and developed preliminary information that indicates that approximately \$8.3 may be subject to redistribution. The largest portion of this amount was identified as \$5.9 million from the Communities Trust Program. Most of the amounts identified stem from excess interest earnings on the idle cash in the accounts of agencies subject to this redistribution requirement. Also, these amounts of interest earnings generally exceed the agency's appropriations authority to use these funds.

In a memorandum dated June 22, 1999, the DEP informed these agencies that there will be a redistribution of P-2000 unexpended account balances. Unencumbered balances are bond proceeds not obligated through the signing of a purchase contract. Further, bond proceeds means both initial principal and interest. Certain exceptions are to be made for the Florida Communities Trust as a result of "extraordinary circumstances." According to information received from DEP in July 1999, approximately \$8,305,337 will be available for redistribution for use in the CARL and Save Our Rivers Programs pending approval of spending authority by the Legislature for Fiscal Year 2000-2001 or subsequent years. The following table illustrates the amounts in the various agencies subject to redistribution.

<u>Agency</u>	<u>Unobligated Cash Bal. Over 3 Yrs. Old</u>
DCA (FCT)	\$5,997,594
DEP	
Div. of Parks/Rec.	23,014
Greenways/Trails	1,161,372
FWCC	623,906
DACS-Forestry	0
TOTAL	\$8,305,887

It should be noted that s. 259.101(9), F.S., was amended during the 1999 legislative session to only recover those unencumbered amounts that have been on deposit in respective subaccounts for agencies for more than 3 fiscal years beginning in FY 2000-2001. Therefore, in future years these will likely be smaller amounts redistributed pursuant to these provisions. In fact, consideration should be given to eliminating the redistribution provisions altogether, since the amounts subject to redistribution are largely interest earnings for which the agencies did not have spending authority.

Related Issues

During the 1999 legislative session, the Legislature enacted ch. 99-247, L.O.F., the Florida Forever Program, which is the successor program to P-2000. This legislation authorized the issuance of up to \$300 million in bonds in FY 2000-2001 and thereafter with debt service paid from documentary stamp revenues, with the total debt service not to exceed \$300 million for all bonds issued. The debt service is limited to \$30 million per year.

The proceeds of the bonds are to be distributed as follows:

- C 35 percent (approximately \$105 million) for water management district projects. Over the life of the program, at least 50 percent of the funds must be used for land acquisition.
- C 35 percent (approximately \$105 million) for CARL projects. Up to 10 percent may be used for capital project expenditures.
- C 24 percent (approximately \$72 million) for the Florida Communities Trust. Of that, 8 percent will be used for the Florida Recreation Development Assistance Program; 30 percent will be used in SMSAs with one-half of that amount being used in built-up areas and at least 5 percent used for recreational trails.
- C 1.5 percent (approximately \$4.5 million) each for the Division of Recreation and Parks, Fish and Wildlife Conservation Commission, and the Division of Forestry for the acquisition of additions and inholdings.
- C 1.5 percent (approximately \$4.5 million) for the Greenways and Trails Program.

Since the enactment of the Florida Forever Program, some glitches have been discovered that need to be addressed in legislation for the 2000 legislative session.

The Department of Community Affairs has indicated that in the new Florida Forever Act, they are required to spend 30 percent of the funds allowed to the Florida Communities Trust in Standard Metropolitan Statistical Areas (SMSAs). According to their records, they are spending more than that annually in these areas. The law should be amended to provide that “at least” 30 percent shall be spent in SMSAs.

The Florida Forever Act attempted to address and simplify the payments-in-lieu of taxes provisions. The payments-in-lieu-of-taxes provisions are intended to compensate local governments that lose revenue generating capabilities from ad valorem taxes due to conservation lands being purchased pursuant to the Florida Forever Program, the P-2000 Program or the CARL program.

Previously, there was a three-part test to qualify for these funds. Counties had to have a population of at least 100,000 (this was changed to 150,000), and counties

had to be levying 8.25 mills (this was eliminated), or they had to show that conservation lands were removed from the tax rolls that exceeded 0.01 percent of the county’s total taxable value (this requirement was retained.) According to information from the Department of Revenue, under the new Florida Forever Act, only Franklin and Lafayette Counties can demonstrate that property exceeding 0.01 percent has been removed from their total taxable value. Previously, eight other counties had qualified apparently because of their population size and millage levies. While these counties would continue to receive the amounts previously received for a period of 10 years, they may not qualify for any additional amounts until they could demonstrate compliance with the loss of taxable value exceeding 0.01 percent.

Provisions that were amended into s. 373.59, F.S., in the Florida Forever Act limit the ability of water management districts to make payments-in-lieu-of-taxes to local governments from loss of lands from any programs other than Florida Forever. This section should be amended to include conservation lands purchased by water management districts using P-2000 Funds or Save Our Rivers Funds. Similarly, the elimination of the minimum millage requirement and the use of the requirement to demonstrate the loss of property to the total taxable value exceeding 0.01 percent will reduce considerably the number of counties and local governments that qualify for the new “payment-in-lieu-of-taxes” provisions.

Committee staff has prepared a proposed committee bill to address these items. Various agencies and interest groups that are involved with the Florida Forever Program have identified several other technical and substantial issues relating to the new Florida Forever Act. These items are still being analyzed and may be suggested for inclusion in the proposed committee bill at a later time.

RECOMMENDATIONS

Originally, it was thought that the tenth and final bond issue for the Preservation 2000 Program would be issued late in the 2000-2001 fiscal year, which would have been after the scheduled repeal of s. 259.101(3), F.S., which prescribes how the bond proceeds must be distributed. However, the ninth bond issue was made on June 8, 1999, and the tenth issue is expected to be made in May or June of 2000, well in advance of the scheduled repeal of s. 259.101(3), F.S., on October 1, 2000. As a result, it would appear that although the scheduled repeal of s. 259.101(3), F.S., on October 1,

2000, would occur after the sale of the tenth and final bond issue, an argument can be made to repeal the repealer and keep the section intact until such time as the entire section relating to the P-2000 Program can be repealed, probably sometime in the next 2 to 3 years..

It is further recommended that legislation be introduced to address the glitches that have arisen since the passage of the Florida Forever Program, the successor program to P-2000.

COMMITTEE(S) INVOLVED IN REPORT (*Contact first committee for more information.*)

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MEMBER OVERSIGHT

Senators Charlie Bronson and Lisa Carlton